

JOSEPH SHEPHERD
 VS.
 SAMUEL SHEPHERD ET AL. } JULY TERM, 1848.

[STATUTE OF FRAUDS—PART PERFORMANCE—SPECIFIC PERFORMANCE.]

To take a parol agreement out of the statute of frauds, on the ground of part performance, the acts done in part performance must not only be referrible exclusively to the contract set up in the bill, but the contract itself must be established by evidence—clear, definite and unequivocal in its terms.

The party must show acts unequivocally referring to, and resulting from, the agreement set up, such as the party would not have done, unless on account of that very agreement, and with a view to its performance; and, the agreement set up must appear to be the same with the one partly performed.

A court of chancery will not decree the specific performance of a mere voluntary agreement.

The Chancellor refused to decree the execution of the contract set up in this case, because, there was a want of the essential elements of unequivocal certainty in the agreement, and in the acts relied upon, as part performance.

[The complainant filed his bill in this court, on the 9th of October, 1847, stating that his mother was in her lifetime seized and possessed of a tract of land in Anne Arundel county, containing about sixty-nine acres, upon which he (complainant) has resided for the last four years; and that his father, by his will, had devised the same to him in fee, under the erroneous impression that he was the fee-simple owner thereof, and had a right to devise it away. The complainant stated that he had asserted no claim to the land under this devise, but that his mother being anxious that he should hold and enjoy it in fee-simple, agreed to convey it to him if he would relinquish his interest in his father's personal estate, in her hands as his guardian; to which proposition he assented, and, for the purpose of carrying it out, executed to her a receipt for said personal property, although he never received any portion thereof; the receipt being intended merely to operate as a payment of so much money upon the land. The complainant further stated, that immediately thereafter he took possession of the land in pursuance of the agreement, and had held it ever since; that his mother, until her death, had treated and spoken of him as